IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 9 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

GUJARAT ALKALIES & CHEMICALS LTD.

Appearance:

1. INCOME TAX REFERENCE No. 9 of 1993
MR K.M.PARIKH for Petitioner
MR JP SHAH for Respondent

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 09/02/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench "C" has referred the following question for the opinion of this Court under Section 256(2) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner of Income Tax, Baroda.

"Whether the Appellate Tribunal is right in law and on facts in cancelling the interest charged under Section 217 of the Income Tax Act?"

2. The Assessment Year is 1982-83 and the relevant accounting period is the financial year ended on 31st March 1982. The Income Tax Officer, while framing assessment order dated 28th March 1985, issued direction to "charge interest under Section 217(1)(a)". Accordingly, interest to the tune of Rs.39,57,885/- was charged under the said provision.

3. The assessee carried the matter in appeal and the Commissioner (Appeals), for the reasons stated in his order of 3rd February 1986, confirmed the levy of interest. According to Commissioner (Appeals), the assessee company was required to file statement of advance tax even if it may be "Nil" statement as per mode of computation laid down in Section 209 of the Act.

4. The assessee challenged the same by way of second appeal before the Tribunal and vide order of 30th April 1990, the Tribunal cancelled the interest charged under Section 217 of the Act. It is this order of the Tribunal which is under challenge.

5. Mr.K.M.Parikh, the learned standing counsel for the applicant - revenue submitted that, as held by C.I.T. (Appeals), even if the statement of advance tax payable was computed at Nil figure, the obligation to file such statement remained and in the circumstances, the assessee having failed to do so, interest was rightly levied by the Income Tax Officer. It was further submitted by him that, for the purposes of applicability of Section 209A of the Act, once the revenue was in a position to show that the total income of an assessee had exceeded the amount specified in sub-section (2) of Section 208 of the Act, the obligation to submit statement was absolute and levy of interest was a natural consequence. That the Tribunal had committed an error in law in taking into consideration various extraneous factors like assessment of Assessment Year 1977-78, which was completed on 10th March 1981, without appreciating that the Tribunal was

dealing with Assessment Year 1982-83 and in the intervening period, various assessment years had gone by; in other words, the contention is that only the immediate previous year's income was required to be taken into consideration for the purposes of ascertaining, and that too, only if pre-condition stipulated in Section 208(2) of the Act was not fulfilled.

6. As against the aforesaid submission, Mr.J.P.Shah, the learned advocate appearing on behalf of the respondent - assessee submitted that the order of the Tribunal was justified considering the scheme of the provisions relatable to computation and payment of advance tax. In support of his submission, he placed reliance on the following decisions of Bombay High Court and Calcutta High Court :

(a) Patel Aluminium Pvt. Ltd. v. Miss K.M.Tawadia, Income-Tax Officer, 165 ITR 99. (Bom).
(b) Commissioner of Income-Tax v. Indian Molasses Co. (P) Ltd., 200 ITR 149. (Cal).
(c) Director of Income-Tax (Exemption) v. Shree Sitaram Public Charitable Trust, 207 ITR 1087. (Cal).

7. Section 217(1)(a) of the Act requires that where, on making the regular assessment, the Income Tax Officer finds that an assessee referred to in Clause (a) of sub-section (1) of Section 209A has not sent the statement referred to in the said clause, simple interest at the prescribed rate for the specified period becomes payable by the assessee.

8. Section 209A(1)(a) of the Act requires that, in case of every person whose current income is likely to exceed the amount specified in Section 208(2) of the Act, he shall file a statement of advance tax payable by him computed in the manner laid down in Section 209(1)(a) of the Act, or Section 209(1)(d)(i) of the Act, provided such person has been previously assessed by way of regular assessment. Upon filing of such statement, such person is enjoined to pay such amount of advance tax as accords with such statement in equal installments on the due dates specified in Section 211 of the Act.

9. Coming to Section 209 of the Act, it becomes clear that the mode of computation of advance tax is laid down by the said provision. For the present, it is necessary only to take into consideration Section 209(1)(a)(i) read with Section 209(1)(d)(i) of the Act. The said provisions stipulate that a person is liable to

pay advance tax which is computed by adopting as the first base his total income of the latest previous year in respect of which he has been assessed by way of regular assessment and, the second base would be the total income of the latest previous year [being a year later than the previous year specified in clause (a) of sub-section (1)], on the basis of which, such person has paid tax by way of self-assessment under Section 140A of the Act. In other words, for the purposes of computing starting point of advance tax payable for a particular year, an assessee is required to adopt one of the two basis, namely, the one which is higher: either the total income assessed for the latest previous year by way of regular assessment, or the total income as shown in the return of income which is accompanied by self-assessment tax, and such return of income is relatable to the latest previous year as well as being later in point qua the year for which assessment is completed.

10. Applying the aforesaid scheme of the Act to the facts of the case, it is seen that the assessment for Assessment Year 1977-78 was completed on 10th March 1981 and the income determined was loss. The first instalment was due on 15-9-1981. Therefore, the first termini ascertained as per provision of Section 209(1)(a)(i) of the Act was an assessed loss. In so far as the requirement under clause (d) of sub-section (1) of Section 209 is concerned, it is an admitted position that, for all subsequent years, the returned income was either "Nil" or at a loss figure. Thus, admittedly, no tax was paid by way of self-assessment tax under Section 140A of the Act. The net result being that the figure of advance tax payable was "Nil", as provided under Section 209 of the Act.

11. In the circumstances, under Section 209A, even if, as urged by the learned standing counsel, the assessee was required to file a statement of advance tax, the same had to be at a figure showing loss or "Nil" figure. Therefore, there was no advance tax payable as such. In the circumstances, the latter part of provision of Section 209A of the Act, which stipulates that, after filing of the statement or the estimate, as the case may be, the person shall pay such amount of advance tax would remain unfulfilled. The requirement of submitting a statement or estimate under the provisions of the Act is for the purposes of paying advance tax and furnishing the basis to the assessing authority on which the advance tax is paid. In the eventuality of there being no liability to pay any advance tax, the requirement of filing a statement cannot be read into provisions dehors the

requirement of law to pay advance tax. The entire exercise is for the purposes of ensuring that tax in advance is paid on the stipulated dates, as provided in Section 211 of the Act.

12. In these circumstances, it is not possible to accept the contention raised on behalf of the revenue that even a "Nil" statement of advance tax payable was required to be submitted. There being no such legislative intent discernible on a plain reading of the provisions of the Act, the impugned order of the Tribunal does not call for any interference.

13. Any requirement to pay interest has to be tested in light of commercial principles also. Has the person who is legitimately entitled, in law and on facts, to interest been deprived of the same? Who is such a person? Such a person is one who has a right in law and on facts to funds / monies which the other person retains and utilises for his own purpose. In the present case, the Revenue does not even contend that it was entitled to any tax in advance in accordance with law or on facts. In the circumstances, it can claim no right to any interest. Thus, even on application of commercial principles, Revenue has failed to make out any case in absence of any legal right.

14. The question referred to the Court is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue. The Reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[H.N.DEVANI, J.]

parmar*